



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2011-0796, FRL-9645-4]

Approval and Promulgation of Implementation Plans;
New York State Ozone Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a proposed revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," Part 234, "Graphic Arts," and Part 241, "Asphalt Pavement and Asphalt Based Surface Coating." The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone.

EFFECTIVE DATE: This rule will be effective [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under the Federal Docket Management System (FDMS) which replaces the Regional Materials in EDOCKET (RME) docket system. The new FDMS is located at www.regulations.gov and the docket ID for this action is EPA-R02-OAR-2011-0796. All documents in the docket are listed in the FDMS index. Publicly available docket materials are available either electronically in FDMS or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW., Washington, DC; and the New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What was included in New York's submittals?
- II. What is EPA's Evaluation of Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?"
- III. What is EPA's Evaluation of Part 234, "Graphic Arts?"

IV. What is EPA's Evaluation of Part 241, "Asphalt Pavement and Asphalt Based Surface Coating?"

V. What Comments Did EPA Receive in Response to its Proposal?

VI. What is EPA's conclusion?

VII. Statutory and Executive Order Reviews

I. What was included in New York's submittals?

On August 19, 2010 and December 15, 2010, the New York State Department of Environmental Conservation (NYSDEC), submitted to EPA proposed revisions to the SIP, which included state adopted revisions to three regulations contained in Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," Part 234, "Graphic Arts," and Part 241, "Asphalt Pavement and Asphalt Based Surface Coating" with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively. These revisions are applicable statewide and will therefore provide volatile organic compound (VOC) emission reductions statewide and will address, in part, attainment of the 1997 8-hour ozone national ambient air quality standards (NAAQS or standard) in the Poughkeepsie, Jefferson County and the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT (NYMA) moderate nonattainment areas.

II. What is EPA's Evaluation of Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers?"

Part 228 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

In contrast to the Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives dated September 2008, Part 228 is applicable to all stationary sources including those applications that occur outside of the factory setting, such as applied in the field. In addition, it includes provisions that apply to the selling, supplying, offering for sale or manufacture for sale in New York of adhesives, sealants, adhesive primers and sealant primers, along with container labeling requirements and product registrations. The VOC content restrictions for these products apply to both their manufacture and application. Stationary sources also have the option of using add-on control equipment provided it achieves 85 percent control. Part 228 also regulates the VOC content/vapor pressure of surface-preparation and clean-up solvents for which the CTG did not make recommendations other than including work practices.

EPA recommends that when states evaluate reasonably available control technology (RACT), as required by section 182(b), when implementing a revised 8-hour ozone standard, that they review the VOC content limits for wood adhesives. This category of adhesives is included in the CTG recommended VOC emission limits. Overall, Part 228: (1) Regulates the same adhesives and adhesive primers as the CTG with the addition of regulating sealants and sealant primers, (2) applies to additional stationary sources, and (3) provides for similar exemptions as the CTG recommends.

EPA has evaluated New York's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA has determined that Part 228 is as effective in regulating this

source category as the CTG and is approving it as part of the SIP and as meeting the requirement to adopt a RACT rule for the Miscellaneous Industrial Adhesives CTG category.

III. What is EPA's Evaluation of Part 234, "Graphic Arts?"

Part 234 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

In contrast to the two CTG documents, one for Offset Lithographic Printing and Letterpress Printing and a second for Flexible Package Printing, issued by EPA in September 2006, Part 234 is generally applicable to all graphic arts facilities located in a severe ozone nonattainment area, which includes the NYMA, or to facilities that emit total actual annual VOC graphic arts emissions of three tons or more on a 12-month rolling basis, which is consistent with or more stringent than the CTG's.

Offset Lithographic Printing and Letterpress Printing

In addition to the general revisions to Part 234, the revised section 234.3 addresses the CTG for Offset Lithographic Printing and Letterpress Printing. Subsections (b), (c) and (d) were added and require more stringent emission controls. Subsection 234.3(b) requires control equipment achieve overall removal efficiencies, i.e., 90 percent if installed prior to July 8, 2010 and 95 percent if installed on or after July 8, 2010. Subsection 234.3(d) includes the VOC limits for heatset web, sheet-fed and cold-set offset lithographic printing processes. Subsection 234.3(c) limits provisions for cleaning materials to a composite vapor pressure less than 10 mm Hg (millimeters mercury) or VOC content of less than 70 percent by weight, with some exceptions.

In addition, section 234.6 requires best management practices for handling, storage and disposal of VOCs, such as keeping VOC and VOC containing materials in closed containers, keeping VOC containing shop towels in closed containers, and recordkeeping requirements. These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Clean Air Act, EPA regulations, and EPA policy and is approving them.

Flexible Package Printing

In addition to the general provisions of Part 234, the revised subsection 234.3(a) addresses the CTG for Flexible Package Printing. Subsection 234.3(a)(1)(ii) was added and requires more stringent emission controls for publication rotogravure and other printing processes. Subsection 234.3(a)(1)(i) contains new maximum allowable VOC content limits for inks, coatings and adhesives (minus water). Section 234.6 requires best management practices (see above description). These revisions are consistent with the CTG recommendations issued on October 5, 2006.

EPA evaluated these provisions for consistency with the Clean Air Act, EPA regulations, and EPA policy and is approving them.

IV. What is EPA's Evaluation of Part 241, "Asphalt Pavement and Asphalt Based Surface Coating?"

Part 241 contains the regulatory provisions applicable to asphalt pavements and asphalt based surface coatings. These provisions were previously regulated under 6 NYCRR Part 205,

“Architectural and Industrial Maintenance (AIM) Coatings” and Part 211, “General Prohibitions.” New York revised these two rules by removing the asphalt provisions and moving them into new rule Part 241.

New York removed the seasonal limit that allowed the use of cutback asphalt from October 16th to May 1st. Part 241 only allows the use of cutback asphalt in two circumstances: when the asphalt is used in the production of long-life stockpile material for pavement patching and repair and when the asphalt is used as a penetrating prime coat for the purpose of preparing a surface to receive asphalt pavement.

New York included a VOC content limit in Part 241 for asphalt surface coatings. No asphalt based surface coating may be applied, sold, offered for sale, or manufactured if it contains more than 100 grams of VOC per liter. This is consistent with the limit that was previously included in Part 205.

Part 241 also includes limits for emulsified asphalt. No emulsified asphalt, as classified under ASTM International standard specifications D 977 or D 2397 may be applied, sold, offered for sale, or manufactured that contains oil distillate, as determined by ASTM International standard test method D 6997, in amounts that exceed the following limits (milliliters of oil distillate per 200 gram sample):

- (a) three milliliters for ASTM grades RS-1, SS-1, SS-1h, CRS-1, CSS-1, and CSS-1h;
- (b) five milliliters for ASTM grades RS-2, CRS-2, and HFRS-2;
- (c) sixteen milliliters for ASTM grades MS-2, HFMS-2 and HFMS-2h; and

(d) twenty milliliters for ASTM grades CMS-2 and CMS-2h.

Similar limits were previously included in Part 211 but they were expressed as VOC content limits in percent by weight. The revised limits included in Part 241 are approximately 17-25 percent more stringent than what was previously included in Part 211.

EPA notes that while the revised limits in Part 241 are more stringent than the previous limits included in Part 211, the States of New Jersey, Delaware and Connecticut have adopted emission limits more stringent than Part 241, specifically during the ozone season months. EPA recommends that when New York evaluates RACT, as is required by section 182(b) when implementing a revised 8-hour ozone standard, that New York consider more stringent asphalt paving limits in line with those adopted by the neighboring states.

EPA evaluated the provisions of Part 241 for consistency with the Clean Air Act, EPA regulations, and EPA policy and is approving them.

V. What Comments Did EPA Receive in Response to its Proposal?

On December 12, 2011 (76 FR 77178), EPA proposed to approve New York's revised Parts 228, 234 and 241. For a detailed discussion on the content and requirements of the revisions to New York's regulations, the reader is referred to EPA's proposed rulemaking action.

In response to EPA's December 12, 2011 proposed rulemaking action, EPA received no comments.

VI. What is EPA's conclusion?

EPA has evaluated New York's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA is approving the revisions made to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 228, "Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers," Part 234, "Graphic Arts," and new Part 241, "Asphalt Pavement and Asphalt Based Surface Coating," with effective dates of September 30, 2010, July 8, 2010 and January 1, 2011, respectively. EPA has determined that the revisions meet the SIP requirements of the Clean Air Act and fulfill the recommended controls identified in the applicable CTGs. EPA is approving these revisions and is also approving the revisions made to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings" and Part 211, "General Prohibitions," both effective January 1, 2011, to avoid redundancy and conflict of the asphalt paving and coating provisions included in new Part 241.

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional

requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 27, 2012.

Judith A. Enck,
Regional Administrator
Region 2

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart HH - New York

2. In §52.1670, the table in paragraph (c) is amended by revising the entries for Title 6, Parts 205, 211, 228 and 234 and adding new entry Part 241 in numerical order to read as follows:

§52.1670 Identification of plan.

* * * * *

(c) * * *

EPA - Approved New York State regulations

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6: * * * * *			
Part 205, Architectural and Industrial	1/1/11	[Insert date of publication]	
Maintenance (AIM) Coatings		[Insert page number where	

		the document begins]	
* * * * *			
Part 211, General Prohibitions	1/1/11	[Insert date of publication]	Section 211.1 (previously
		[Insert page number where	numbered 211.2) is not part
		the document begins]	of the approved plan. (see
			11/27/98, 63 FR 65559)
* * * * *			
Part 228, Surface Coating Processes,	9/30/10	[Insert date of publication]	
Commercial and Industrial Adhesives,		[Insert page number where	
Sealants and Primers		the document begins]	
* * * * *			
Part 234, Graphic Arts	7/8/10	[Insert date of publication]	SIP revisions submitted in
		[Insert page number where	accordance with § 234.3(f)
		the document begins]	are effective only if approved
			by EPA.
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Part 241, Asphalt Pavement and Asphalt	1/1/11	[Insert date of publication]	
Based Surface Coating		[Insert page number where	
		the document begins]	
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